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October 22, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 20, 2008

Case Number: TSO-0645

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter "the Individual") for access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, the Individual's access authorization should not be restored at this time.

I. Background

The Individual has held a security clearance since 1991. DOE Ex. 3 at 2. In March 2008, the Local Security Office (LSO) issued a Notification Letter that cited security concerns under 10 C.F.R. §§ 710.8(f)(Criterion F) (falsification), 710.8(l) (Criterion L) (financial irresponsibility).

The Individual requested a hearing before an Office of Hearings and Appeals (OHA) Hearing Officer. DOE Ex. 2. The OHA Director appointed me to serve as the Hearing Officer. At the hearing, DOE Counsel did not present any witnesses. The Individual testified and presented five witnesses: four individuals who know the Individual from the workplace, and a friend. The Individual also submitted extensive documentation of her current financial status.

II. Governing Standards

Under Part 710, certain types of information raise concerns about whether an individual is eligible for access authorization. Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once

a security concern exists, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, how frequently it occurred, how recently it occurred, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

III. Findings and Analysis

A. Criterion L

Excessive indebtedness and the failure to meet financial obligations are derogatory information under Criterion L. 10 C.F.R. § 710.8(1) ("circumstances which tend to show that an individual is not honest, reliable or trustworthy," including "a pattern of financial irresponsibility"); see also Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (the Adjudicative Guidelines) ¶¶ 19(a) ("inability or unwillingness to satisfy debts"); 19(c) ("a history of not meeting financial obligations"), 19(e) ("consistent spending beyond one's means").

It is undisputed that the Individual has a history of financial delinquencies. See, e.g., DOE Ex. 2 (Individual's request for hearing). Once a security concern exists, an individual has the obligation to resolve the concern. In the case of a history of financial delinquencies, an individual can resolve the concern by demonstrating a reformed attitude and a pattern of financial responsibility. See, e.g., *Personnel Security Hearing*, Case No. TSO-0411, 29 DOE ¶ 83,050 at 86,978 (2007).

The Individual testified that her current financial difficulties arose during the last several years and are attributable to family obligations, her mother's illness, student loans, and basic expenses. See, e.g., Tr. at 77-86. The Individual testified that she recently established a debt management plan through a credit counseling service. Tr. at 92-94; Ex. 2. She testified that she is now making monthly payments on her accounts, and her plan record

corroborates that testimony. See, e.g., Tr. at 93-94; Ex. 2 (Creditor Balances; Deposit History). Finally, the Individual testified that she took a seasonal, second job this summer, which will resume for the holidays, and that this second job allows her to increase her payments. Tr. at 117; Request for Hearing (pay stub).

The Individual has clearly established that she has entered into a debt management plan to address her delinquencies. But the establishment of this plan is insufficient to resolve the security concern. As an initial matter, I note that two of the four creditors covered by the plan have not yet agreed to the plan. Tr. at 93-94; Ind. Ex. 2. Accordingly, although the Individual is making payments on all four accounts, two are still delinquent. More importantly, the Individual did not enter into the debt management plan until May 30, 2008, several weeks after the issuance of the Notification Letter. Ind. Ex. 2 (Plan Agreement at 6). Accordingly, it is too early to conclude that the Individual has established a *pattern* of meeting her financial obligations.

B. Criterion F

Providing false information on a Questionnaire for National Security Positions (QNSP) is derogatory information under Criterion F. 10 C.F.R. § 710.8(f); see also Adjudicative Guidelines ¶ 16(a). False statements on a QNSP raise the issue of whether an individual can be trusted. See, e.g., *Personnel Security Hearing*, Case No. TSO-0572, 30 DOE ¶ 82,785 at 85,668 (2008).

It is undisputed that the Individual provided false information on a 1996 and 2007 QNSP. The QNSP asks whether, during the last seven years, an individual has been over 180 days delinquent on a debt. DOE Ex. 13 at 23; DOE Ex. 14 at 9. The Individual falsely answered "no" on both QNSPs. When asked if she intentionally provided false answers, the Individual answered "probably" for the 1996 QNSP, Tr. at 71, and in the affirmative for the 2007 QNSP, stating that she was "embarrassed" and "ashamed" of her financial situation. *Id.* at 66.

The Individual maintains that, despite her false answers on the QNSPs, she is honest, reliable, and trustworthy. She testified that she is "independent" and a "private person," Tr. at 74, but she now realizes that she can be open about her financial situation and "let people help" her, *id.* at 75. The Individual's five witnesses all testified that she is honest, reliable and trustworthy. See, e.g., *id.* at 19, 29-30, 39, 42, 55.

The Individual's expressed insight into the reasons for her falsehoods and the testimonials from the other witnesses constitute favorable information. Nonetheless, they are not sufficient to resolve the concern. The Individual's 2007 falsification is relatively recent, and she did not bring the falsification to DOE's attention. Instead, she waited until the January 2008 Personnel Security Interview, which was convened to discuss her credit report. DOE Ex. 15 at 7. Given these circumstances, doubt remains about the Individual's willingness to be truthful on matters that she finds difficult or embarrassing. Accordingly, the Individual has not resolved the Criterion F concern at this time. See, e.g., *Personnel Security Hearing*, TSO-0560, 30 DOE 82,793 at 85,717 (2008) (no indication that individual would have disclosed information in the absence of a personnel security interview, which occurred approximately one and one-half years before Hearing Officer decision).

IV. Conclusion

The Individual has not resolved the Criteria F and L concerns set forth in the Notification Letter. For that reason, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet N. Freimuth
Hearing Officer
Office of Hearings and Appeals

Date: October 22, 2008